Backgrounder

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Center for Immigration Studies

Inalienable Identification

Key to Halting Illegal Employment

By David Simcox

Security of vital records, drivers licenses, passports, and other federal and state ID documents is not just about immigration control. Even if there were no immigration at all, there would be a pressing national interest in reliable and secure personal identification and databases for such needs as crime control, government entitlements, banking, health care, tax collection, gun control, and child support enforcement.

While the near anarchy in the misuse of vital records remains discouraging, Congress did pass in 1996 the most extensive and rigorous legislation yet to combat document fraud in the administration of immigration, public assistance, and related government programs. Their actions reflect a growing national exasperation with rampant fraud. But patience is needed: A number of these provisions will need considerable time to begin changing behavior. And errant notions about privacy threats will continue to cause backpedaling, or provide a pretext for it: In November 1999 Congress repealed on privacy grounds a promising 1996 law that would require states drivers licenses to meet high federal security standards.

For now, the country remains awash in counterfeit and misrepresented identification documents. INS's pilot work eligibility verification projects in the past half decade have proved what has long been suspected: In industries dependent on foreign workers — such as meat packing and food processing — a huge segment of the work force defeats the intent of employer sanctions with fake documents. The production and distribution of false documents has become a large and sophisticated industry that has advanced beyond its "cottage" phase.

A rapidly growing foreign work force, rising prosperity, tight labor markets, the spreading administrative anonymity and interdependence of U.S. society, and the innocence and trusting nature of American institutions have come together to make secure identification more urgent.

The immense demand for ID documents "proving" the right to work in the United States leads to the exploitation of the most obscure weak points in the federal and state systems. In identification, as in the physical world, nature abhors a vacuum. In 1996, the motor vehicle administration in Kentucky, which has only a small foreign-born population, dropped the requirement that foreign applicants take drivers' tests. Within weeks, Circuit Court clerks in larger counties saw a significant rise in the number of foreign applicants coming in escorted groups from New York and other major immigrant gateway cities. In Louisville, applications by foreigners rose to nearly 200 a week. INS discovered that a major national immigrant smuggling ring had identified the state as an easy mark for obtaining drivers licenses.

The state also helped invite fraud by not requiring evidence of residence in the state, by granting licenses to visitors with short-term non-immigrant visas, by declining to verify questionable immigration and vital records documents, and by delivering the finished license on the spot rather than mailing it to the applicant as do many state MVAs.

The remedies to abuse of vital records and ID documents lie in large part with the states. The record of the 13 years since enactment of IRCA shows that most states genuinely want to improve the security and reliability of their vital records and ID documents, such as drivers licenses, for reasons of public interest far beyond helping the federal government to enforce immigration law. The steady improvement in the physical security and anti-fraud measures in state motor vehicle operators licenses in the 1990s has been impressive.

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Seeking Progress in a Divided Congress

If it chooses, Congress still has considerable power to help. The lawmakers' repeal of the 1996 legislation requiring federal security standards for all drivers licenses, while a major setback, still leaves the states with many options to increase standards on their own. Meanwhile, Congress and executive branch agencies must avoid the temptation to override or undercut INS screening systems when they start working as intended and rile important employer interests. The most secure documents and technology are meaningless if our government doesn't really want to halt the hiring of illegals. There are still things a well-intentioned Congress can do to maintain and expand the states' own efforts to bring uniformity and security to their licenses, including:

- Mandating the Social Security Administration (SSA) and INS to give state MVAs on-line, interactive access to their files, thus permitting verification of applicants' identity *before* issuance of the license.

- Supporting and encouraging the continued upgrading of reliability and security of state vital records.

- Supporting the establishment, under state auspices, of an "all driver" file and pointer system secured by a unique identifier such as the Social Security number to reduce fraud, flag problem drivers, and prevent issuance of multiple licenses.

- Providing, sharing, or funding research on affordable biometric technology.

- Enacting federal legislation raising the penalties for fraudulent use of state vital records documents.

Federal Help Without "Federalization"

As directed by the 1989 Immigration Nursing Relief Act, INS analyzed progress in securing state vital records and reported in 1993 that, unlike the drivers license, it was "slow." Six years later it is still slow. Abuse of "breeder documents" is ubiquitous. Indeed, improvements in the security of INS documents proving work eligibility, and the removal of others that were too easily falsified, have increased the popularity of fake or falsified U.S. birth certificates among illegal-alien job-seekers. A false claim of U.S. citizenship bypasses the risk and high-cost of submitting forged work authorization documents.

While there is a uniform model vital records statute drawn up by the National Center for Health Statistics and the National Association for Public Health Statistics and Information Systems, it is not binding on many states. Our state-based system of vital records continues to suffer from a dizzying diversity of document formats, standards, and legal statuses, even within states. There are no national master files and the present incompatibilities in the system would make it very hard to establish one.

Many well-intentioned states lack the resources to meet the standards in the model statute. Kentucky, for example, supports the concept of matching all birth and death records, but scarcity of resources forces it to limit its matching to in-state births and deaths — and only for those nine and under.

States need tougher sanctions in their statutes against fraud, alteration, and imposture in the use of their own vital records, now only a misdemeanor in most states. Many lack even the authority to confiscate fraudulent ID documents. Usually purchasers and users of fraudulent documents are accomplices rather than innocent victims of swindlers.

INS could help the states by sending a clear message that those who obtain work authorization or legal residence through document fraud will not benefit from their misdeeds. While such offenses are deportable, this is not the message INS has been sending. INS now cracks down on the makers and purveyors of false documents, but because of staff shortages rarely acts against the willing beneficiaries of the schemes. Beginning one's membership in the national community with acts of fraud and bribery does not bode well for good citizenship.

Congress has a continuing interest and a role here, and it does not involve "federalizing" the nation's vital records system. Federal agencies such as the Department of Health and Human Services, the State Department Passport Office, and the INS depend on accurate and timely vital records. Congress should further expand the grants and other incentives it has given to state vital statistics agencies through the National Center for Health Statistics to encourage greater standardization, computerization of registering and reporting, rapid sharing of information among states and with federal agencies, and matching of all birth and death records.

Congress Must Consider Its Incentives to Fraud

Congress itself must be more sensitive to the potential for document fraud. This requires a greater awareness of the vulnerabilities and limitations of ID systems and vital records in the United States. The tendency has been to pass laws awarding immigration benefits to specifically defined groups that exceed the capacity of federal agencies to adjudicate them accurately. The 1986 Special Agricultural Workers Program (SAW) was an egregious example: Vague criteria and unverifiable personal data

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opened the door to massive fraud. Such giveaways threaten the very integrity of our immigration system.

Congress, in its hearings and investigatory process on creating or expanding immigration benefits should give more consideration to the practical question of whether the benefits can be adjudicated with reasonable accuracy and security. It is my impression from years of following these hearings that witnesses from the executive branch are often not fully candid on such issues. Not wanting to appear inept or unhelpful, they are reluctant to acknowledge fully the inadequacy and vulnerability of U.S. data and document systems and their proneness to pervasive fraud. Correct determination of immigration eligibilities based on foreign documents or aliens' affidavits is even more problematic, verging on the impossible.

Permanent resident status in the United States has become one of the most valuable commodities on this planet. It is hardly surprising that each congressional act to extend it to a new group will confer immense value on documents or information showing membership in that group. Such legislation evokes remarkable creativity and entrepreneurship throughout the world to produce the needed documents or data and rising political pressures on legislators to accept lower standards of proof.

Before each vote on such measures, members of Congress should have the information that will make them ask themselves: Will administrators have the reliable information and the clarity of guidelines to award this benefit only to those deserving it, while effectively screening out the myriad of unentitled who are likely to claim it? If the honest answer is "no," then the question must be whether the public interest would be better served by delaying, defeating, or reformulating such legislation.

Sacrificing Rigor and Accuracy to "Customer Service" and Privacy

Legislators and administrators must recognize and deal with the fact that tighter screening and closer scrutiny of personal identification has a political cost. Every administering agency — indeed, Congress itself — has three conflicting goals in applying the law: Good customer service, protection of privacy, and accuracy of information on which to base the decision. All too often the search for accuracy comes to be seen as "red tape" to be cut in the interest of quick customer satisfaction. The "customer-satisfying" visa waiver law has opened new opportunities to fraud and vastly increased the value of fake passports of waiver-designated nations. Often forgotten is that millions of American who favor responsible management of immigration are also "customers."

Similarly, the debate over improved identification has tended to pivot on the possible threats to the privacy interests of potential victim groups, while overlooking the added protection such systems may provide to the privacy and security of scores of millions of ordinary Americans. This may help explain why polls show that most Americans — including minorities and immigrants — favor a national ID system, with greatest support among lower income groups (Gallup surveys, 1983 and 1993; CNN/*USA Today*/Gallup Poll, July 9, 1995).

The presumption of threats to privacy is often raised as an obstacle to accuracy and completeness of information, a convenient scarecrow for those whose real objections lie elsewhere. Reconciling basic privacy safeguards and effective compilation and use of personal data is one of the toughest things policy makers must do in our democratic society. Public and congressional perceptions of the extent of threats to privacy have varied widely and at times unexplainably, depending on the affected interests.

The 105th and 106th Congresses have blocked the implementation of federal standards of acceptability for state drivers licenses legislated in the 105th Congress, ostensibly because of fears of threats to privacy and individual freedom. But to crack down on child support deadbeats, and with little reference to privacy concerns, the 104th Congress in the Welfare Reform Act mandated creation of a nationwide "Directory of New Hires," a massive database of the nation's workers that imposes new responsibilities on employers and gives the federal government an unprecedented ability to monitor the work force. For reasons of privacy, however, that data is not accessible to INS and other law enforcement agencies.

Conclusion: Boldness Needed to End Chaos

The Social Security Administration's 1997 study of the options for a tamper-proof, secure Social Security card — one that can carry varying amount of personal and administrative data and which may use biometrics (*Report to Congress on Options for Enhancing the Social Security Card*) — shows clearly the technical, administrative and financial feasibility of giving the American people a useful and secure document that will help safeguard their privacy and reduce identity theft.

Even the highest-cost option, a plastic card with optical storage at a total cost of $9.2 billion, seems reasonable when spread over five or more years and when compared with prospective savings to Americans from forestalling fraud and abuse. The appropriate Congressional committees must give serious study to those options that are the most fraud-proof and the most sophisticated in storing and protecting personal data, take the lead in educating the rest of Congress, and develop legislative initiatives.

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Tough trade-offs must be made among the competing goals of accuracy, privacy, and customer service. The appropriate Congressional committees need to give serious study to those options that are the most fraud-proof and the most sophisticated in storing and protecting personal data, take the lead in educating the rest of Congress, and develop legislative initiatives to combat this serious problem.